

lml

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

MICHAEL DEAN,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 01-2599-JAR
)	
JACK ANDERSON; PEGASUS)	
ENGINEERING, L.L.C.; THOMAS WATERHOUSE;)	
CHARLES BAKER; and BAKER ASSOCIATES,)	
)	
Defendants.)	
_____)	

**MEMORANDUM AND ORDER GRANTING
MOTIONS FOR ATTORNEY FEES**

_____ On September 26, 2003, the Court entered an order (Doc. 150) granting defendants' motions for attorney's fees on the issue of entitlement, and denying the applications without prejudice as to the amount of the fees that are reasonable. Defendants have re-filed and re-served their motions in accordance with the directives of that order: 1) Motion of Defendants Jack Anderson and Pegasus Engineering, L.L.C. Under Fed. R. Civ. P. 54(d) for Attorneys' Fees (Doc. 158); and 2) Baker Defendants' Supplemental Motion for Award of Sanctions, Attorneys' Fees and Costs (Doc. 160). Defendants have served the motions on plaintiff. Plaintiff has not responded to defendants' amended motions for fees or defendants' previous efforts to consult with regard to their content. The Court has reviewed defendants' applications and is ready to rule.

Analysis

Once a party has established its entitlement to fees, the court must determine what fee is reasonable. In determining reasonable attorney's fees, the court arrives at a lodestar figure by

multiplying the hours counsel reasonably spent on the litigation by a reasonable hourly rate and then determines whether the lodestar figure is subject to upward or downward adjustment.¹ The applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates.² Under D. Kan. Rule 54.2, “the moving party shall file . . . a memorandum setting forth the factual basis for each criterion which the court is asked to consider in making an award The memorandum shall be supported by time records, affidavits, or other evidence.”

The first step in calculating the lodestar is to determine the number of hours counsel reasonably expended on the litigation.³ The burden is on the applicant to prove that the hours billed are reasonable by “submitting meticulous, contemporaneous time records that reveal, for each lawyer whom fees are sought, all hours for which compensation is requested and how those hours were allotted to specific tasks.”⁴ The court “is justified in reducing the reasonable number of hours if the attorney’s time records are ‘sloppy and imprecise’ and fail to document adequately how he or she utilized large blocks of time.”⁵

After determining whether the hours are reasonable, the court must determine the reasonable rate. In setting the hourly rate, “the court should establish, from the information provided to it and from its own analysis of the level of performance and skills of each lawyer whose work is to be

¹See *Jane L. v. Bangerter*, 61 F.3d 1515, 1509 (10th Cir. 1995).

²See *Case v. Unified School Dist. No. 233*, 157 F.3d 1243, 1249-50 (10th Cir. 1998).

³*Id.* at 1249.

⁴*Id.* at 1250.

⁵*Id.* (citing *Jane L. v. Bangerter*, 61 F.3d at 1517).

compensated, a billing rate for each lawyer based upon the norm for comparable private firm lawyers in the area in which the court sits calculated as of the time the court awards the fees.”⁶ “The party requesting the fees bears ‘the burden of showing that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.’”⁷ “The focus must be on the ‘prevailing market rate in the relevant community.’”⁸

1. Anderson Defendants

Attorneys Fees

The Anderson Defendants seek total fees in the amount of \$41,975.00. This amount represents \$33,315.00 performed by Mr. Dzida’s firm, and \$8,660.00 for the work performed by Mr. Jurcyk’s firm. The hourly rates/time sought for counsel are as follows:

Attorneys:

Joseph Dzida:	104.1 hours @ \$300 per hour
D. Daniel Pranata:	13.9 hours @ \$150.00 per hour
John J. Jurcyk:	24.2 hours @ \$200.00 per hour
Douglas Greenwald	4.90 hours @ \$200.00 per hour
Ryan Denk:	1.90 hours @ \$150 per hour
Juliann Johnson:	4.0 hours @ \$150 per hour

In addition, the Anderson Defendants seek an hourly rate of \$100 per hour for four legal

⁶*Ramos v. Lamm*, 713 F.2d 546, 555 (10th Cir. 1983).

⁷*United Phosphorus, Ltd. v. Midland Fumigant, Inc.*, 205 F.3d 1219, 1234 (10th Cir. 2000) (citations omitted).

⁸*Id.*

assistants, for a total of 20 hours.

The Court has reviewed the summary of time presented by counsel and finds that the claimed number of hours is reasonable. The Court further finds that, although at the high end, the rates charged by local counsel—\$150 to \$200—are in line with the rates prevailing in the Kansas City Community by lawyers of comparable skill, experience, and reputation.⁹ Although the prevailing rates in California may be higher, Mr. Dzida's rates will be reduced to \$200 per hour to reflect the prevailing rates in this District. The Court further finds that \$100 per hour, although at the high end, is a reasonable rate for paralegals in the Kansas City area. The Court further finds that no adjustment to the lodestar figure, other than the rate adjustment for Mr. Dzida, is warranted. The Court therefore awards reasonable attorney's fees to Mr. Dzida's firm in the amount of \$22,905.00 [\$33,315.00 - \$10,410.00], and to Mr. Jurcyck's firm in the amount of \$8,660.00, for a total award of \$31,565.00.

Expenses

In addition to attorneys fees, the prevailing party is entitled to recover reasonable expenses that

⁹ See, e.g., *Russell v. Sprint Corp.*, 2003 WL 21994746 (D. Kan. August 20, 2003) (\$175.00 per hour for lead counsel, \$150 for other counsel, \$80.00 for paralegal); *Sheldon v. Vermonty*, 237 F.Supp. 2d 1270 (D.Kan. 2002) (\$155.00 per hour is market rate in Kansas City for lead counsel); *Robbins v. Chronister*, No. 97-3489-DJW, 2002 WL 356331 at *13 (D.Kan. Mar.1, 2002) (\$175.00 per hour for counsel); *Lintz v. Am. Gen. Fin., Inc.*, 87 F.Supp. 2d 1161, 1171 (D.Kan. 2000) (\$155.00 per hour for counsel) (citing *Baty v. Willamette Indus., Inc.*, No. 96-2181-GTV, 1999 WL 713959 at *2 (D.Kan. Aug.16, 1999)); *Wilder-Davis v. Board of Comm'rs of Johnson County, Kan.*, No. 98-2363-GTV, 2000 WL 1466691 at *5 (D. Kan. Aug 8, 2000) (\$165.00 for lead counsel, \$110.00 for other attorneys); *Cadena v. Pacesetter Corp.*, No. 97-2659-KHV, 1999 WL 450891 at *5-6 (D.Kan. Apr.27, 1999) (\$155.00 per hour for counsel with eight years experience; \$58.00 per hour for paralegal); *Hampton v. Dillard Dep't Stores, Inc.*, No. 97-2182-KHV, 1998 WL 724045 at *2 (D.Kan. Sept.24, 1998) (\$190.00 per hour for counsel with 28 years experience in "cutting edge civil rights litigation," \$65.00 per hour for paralegal); *Outdoor Sys., Inc. v. City of Merriam, Kan.*, 2000 WL 575023 at *4-5 (D.Kan. Feb.25, 2000) (\$165.00 and \$155.00 per hour for lead counsel, \$70.00 per hour for paralegal).

are usually itemized and billed separately, as long as the expenses are reasonable.¹⁰ Mr. Jurcyk's firm also seeks expenses for cash advances itemized as follows:

Pro hac vice fee	\$10.00
Long distance	72.76
Mileage/tolls	209.54
Copies	70.20

The Court finds that these items are usually itemized and billed separately in this district. The amounts claimed appear reasonable and accordingly, the Court will allow reasonable expenses in the amount of \$362.50.

2. Baker Defendants

Attorneys Fees

The Baker Defendants seek total fees in the amount of \$35,279.81. This amount represents \$28,377.81¹¹ billed by Tonna Farrar and \$6,902.00 billed by Jeffrey Brown. The hourly rates/time sought by counsel are as follows:

Tonna Farrar:	227.07 hours @ \$130.00 per hour
Jeffrey Brown:	49.3 hours @ \$140.00 per hour

The Court has reviewed the summary of time presented by counsel and finds that the claimed number of hours is reasonable. The Court further finds that the rates charged by local counsel—\$130 to

¹⁰See *Sussman v. Patterson*, 108 F.3d 1206, 1213 (10th Cir. 1997).

¹¹227.07 hours at \$130 per hour amounts to \$29,519.10. It appears that Ms. Farrar included several time entries in her total hours that were listed as “no charge.”

\$140 per hour—is in line with the rates prevailing in the Kansas City Community by lawyers of comparable skill, experience, and reputation, as noted above. The Court further finds that no adjustment to the lodestar figure is warranted. The Court therefore awards reasonable attorney’s fees in the amount of \$35,279.81.

Expenses

The Baker Defendants ask the Court to award expenses for the following amounts:

Tonna Farrar

Long distance	\$299.92
Delivery/courier	237.30
Copies	157.80
Notary fee	2.00
Federal Express	27.75
Deposition costs	362.00
Mediator fee	525.00
Travel to California	636.63
Travel to Topeka	144.47
Postage	49.30

Several entries do not specify the type of expense billed. The Court will not allow those expenses, which total \$189.44. With the exception of postage,¹² the Court finds that the items listed

¹²Federal courts in Kansas deny taxation of postage costs based upon a lack of statutory authority in 28 U.S.C. § 1920. *See Ortega v. IBP, Inc.*, 883 F.Supp. 558, 562 (D. Kan. 1995).

above are usually itemized and billed separately in this district. The amounts claimed appear reasonable and accordingly, the Court will allow reasonable expenses in the amount of \$2,390.87 [\$2,629.61 - 189.44 - 49.30].

Jeffrey Brown

Investigative services	\$645.00
Service of subpoenas	300.00
Delivery fees	58.00
Copying expenses	12.00

The amounts claimed appear reasonable and accordingly, the Court will allow reasonable expenses in the amount of \$1,015.00.

IT IS THEREFORE ORDERED BY THE COURT that the Anderson Defendants' amended Motion for Attorneys Fees (Doc. 158) is GRANTED. The Court approves reasonable attorneys fees of \$31,565.00 and reasonable expenses of \$362.50.

IT IS FURTHER ORDERED that the Baker Defendants' Supplemental Motion for Attorneys Fees and Costs (Doc. 160) is GRANTED. The Court approves reasonable attorneys fees of \$35,279.81 and reasonable expenses of \$3,405.87.

IT IS SO ORDERED.

Dated this 13th day of May 2004.

S/ Julie A. Robinson
Julie A. Robinson
United States District Judge